

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAWN DeREESE MEDEIROS, RCP
P.O. Box 1313
Nevada City, CA 95959

Respiratory Care Practitioner License No.
RCP 7922

Respondent.

Case No. R-2026

OAH No. N2006090626

PROPOSED DECISION

On December 12, 2006, in Sacramento, California, Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Catherine E. Santillan, Senior Legal Analyst, represented the complainant.

Dawn DeReese Medeiros (respondent) was present and represented herself.

The record was held open for the submission of additional evidence. On December 18, 2006, complainant submitted a breakdown of costs of investigation and prosecution of this matter, which was marked as Exhibit 6, and admitted into evidence. The matter was submitted for decision on December 18, 2006.

FACTUAL FINDINGS

1. On May 15, 2006, complainant Stephanie Nunez made and filed the Accusation in her official capacity as Executive Officer, Respiratory Care Board of California, Department of Consumer Affairs, State of California (Board).

2. On July 26, 1985, the Board issued Respiratory Care Practitioner License No. RCP 7922 to respondent. Respondent's license was in full force and effect at all times pertinent herein; the license expired on September 30, 2006, and has not been renewed.

3. On May 5, 2005, in Nevada County Superior Court, Case No. F04-527, respondent was convicted, upon her plea of no contest, of a violation of Health and Safety Code section 11377(a), Possession of a Controlled Substance (Methamphetamine), a felony.

4. The circumstances giving rise to respondent's conviction took place on September 2, 2004. On that date, the Nevada County Narcotics Task Force of the Nevada County Sheriff's Department executed a search warrant at respondent's residence. Respondent and her 21-year-old daughter were present in the residence at the time the warrant was executed. During the search of respondent's residence, seven people came to the residence, and five were arrested on drug-related charges and transported to jail. There were numerous telephone calls to the residence during the search.

5. During the course of a preliminary search, Investigator Bill Smethers, Jr. discovered five small ziplock baggies in plain view on respondent's bed. Three baggies contained a white powdery substance, and two were empty. The contents of the baggies subsequently tested positive for amphetamine/methamphetamine using a Marquis Reagent field tester. Officer Jim Casci placed respondent under arrest for possession of methamphetamine. After conducting a field sobriety test, Officer Casci suspected that respondent was under the influence of a controlled substance. Respondent agreed to submit to a urine test. The test results were positive for amphetamines and methamphetamines.

6. Officers searched respondent's residence, including the living room and respondent's bedroom. They discovered multiple ziploc baggies containing white powder, Zig Zag rolling papers, a cigarette rolling machine, a straight edge razor blade, and a digital scale containing white residue. The total net weight of all the suspected methamphetamine seized in the residence was 10.9 grams. The amounts of white powder in the baggies and the quantities of the baggies were indicative of possession for sale of methamphetamine. Two operational radio scanners were found at the residence, one of which was in respondent's bedroom; both were programmed with the Nevada County Sheriff's Office radio frequency, as well as other law enforcement agencies. The officers also located drug paraphernalia, consisting of methamphetamine smoking pipes.

7. In respondent's bedroom, on top of the dresser, the officers discovered two white oblong tablets. No prescription bottle was present. The pills were subsequently identified as being hydrocodone, 5 mg., a Schedule III narcotic.

8. On September 2, 2004, Officer Casci interviewed respondent at the Nevada County Jail. Initially, respondent denied knowledge of any methamphetamine in the baggies at her house. She subsequently admitted that she bought about eleven grams of methamphetamine from an old friend for \$300 to help pay for the first month of rehab for another person. She and her friend repackaged the methamphetamine, "weighing it out" in

the amounts the officers discovered. She told Officer Casci that there were about ten or eleven grams in the main bag that she bought from her friend and another two or so grams in other baggies that they weighed out. Respondent refused to identify the individual who sold her the methamphetamine. Respondent also told Officer Casci that only she and her daughter lived at the apartment, and that while other individuals frequently stayed over, they did not reside at the apartment.

9. On October 7, 2004, a felony complaint titled *People of the State of California v. Dawn DeReese Medeiros*, case no. F04-527A, was filed in Superior Court, Nevada County. Count I charged respondent with a felony violation of Health and Safety Code section 11377, subdivision (a), possession of a controlled substance, methamphetamine; Count II charged respondent with a felony violation of Health and Safety Code section 11350, subdivision (a), possession of a controlled substance, hydrocodone. Count III charged respondent with a misdemeanor violation of Health and Safety Code section 11364, possession of drug paraphernalia. Count IV charged respondent with a misdemeanor violation of Health and Safety Code section 11550, subdivision (a), under the influence of a controlled substance, methamphetamine. In view of her no contest plea to Count 1, as set forth in Finding 3, Counts II-IV were dismissed.

10. As a consequence of her conviction, imposition of sentence was suspended on June 6, 2005, and respondent was placed on supervised probation for three years, subject to various terms and conditions. Respondent was ordered to serve 120 days in county jail; pay fees, fines, and assessments totaling \$1,441.25, in installments of \$35 per month; submit to random drug testing; not use or possess controlled substances; attend drug counseling as directed by the probation officer; register as a Controlled Substances Offender pursuant to Health and Safety Code section 11590; submit to warrantless searches; complete a six month substance/alcohol abuse out-patient program, as directed by the probation officer; and comply with other standard terms and conditions. Respondent was also ordered to pay additional costs, separate from the terms and conditions of probation, in an exact amount not established by the evidence.

11. Respondent served a total of 84 days in jail, at the Wayne Brown Correctional Facility in Nevada City. With the concurrence of her probation officer, respondent attended twice-weekly meetings of Narcotics Anonymous (NA) after her release from jail, in satisfaction of the requirement that she enroll in an out-patient drug rehabilitation program. She stopped attending NA after six months, because she did not feel she has a drug problem. She last attended NA in late 2005 or early 2006. Respondent has been subjected to three random drug tests and two warrantless searches of her home, with no drug use or possession detected. Respondent is making payments of \$35 per month toward Court-ordered fines, and has a balance due of \$1,056.25 as of the date of hearing. She is making payments of \$50 per month for probation costs, including the cost of the presentencing report, and has a balance remaining of \$735. In a letter dated December 11, 2006, respondent's probation officer, Norm Rasmussen, stated, "I have supervised Dawn since she has been on probation. She is

in compliance with all the terms and conditions of her grant of probation.” However, respondent admitted at hearing that she had not registered as a Controlled Substances Offender pursuant to Health and Safety Code section 11590, notwithstanding the fact that failure to do so is a crime pursuant to Health and Safety Code section 11594. Respondent will remain on criminal probation until June 6, 2008.

12. At hearing, respondent denied that she has a substance abuse problem. She claimed that she “just tried it (methamphetamine)” twice in her life, once 10 years ago, and once the night before her arrest.

13. According to respondent, she and her daughter had recently moved to a new apartment to get away from the friends that used to hang around her daughter at their prior residence. Nevertheless, respondent allowed at least two of her daughter’s friends to stay at the new apartment. Respondent claimed that “things were going on” that she “was not aware of,” or that she “turned her head.” She stated that she “should have been stronger,” but she felt that “kids will be kids,” and “it would pass.” She claimed that her daughter’s ex-boyfriend had confiscated methamphetamine from a girl that he was taking to a drug rehabilitation program, and he brought the drugs to respondent because “he needed \$500” to pay for the girl’s rehab. Respondent stated that she “loaned” him \$200 or \$300 to help get the girl into rehab. Purportedly, the plan was for her daughter’s ex-boyfriend to “pick up the drugs and repay [respondent] later in the week.” Although she claimed she was “holding” the drugs for “a friend,” she admitted helping to weigh and repackage the methamphetamine, and she “assumed he was going to sell them to get the money to pay for his friend’s rehab.” When the police came, respondent “said everything in the house was mine” in order to protect her daughter, since respondent knew she [respondent] “was going to get in trouble anyway.” Respondent’s daughter had an alcohol problem, and had previously been arrested, prior to her twenty-first birthday, for being drunk in public.

14. With regard to the tablets of hydrocodone (Vicodin), respondent claimed to have a valid prescription for the drugs, but the police did not permit her to get the prescription bottle out of the bathroom. She admitted possessing a “meth pipe” with her name on it, but claimed it had been given to her as a joke, because she “did not do drugs.” She claimed she had purchased the baggies found at the apartment to store her jewelry, and she owned the scale because she needed to measure food for her son, who was on a special diet for a medical condition. She also claimed that the police scanners belonged to her ex-husband and they were not turned on.

15. Respondent’s explanation of the events leading up to her arrest and conviction was implausible, and was an attempt to minimize her involvement, rather than to take responsibility for her actions.

16. Respondent felt going to jail “opened [her] eyes” to the dangers of drugs, and “how they can ruin your life.” She knows that she is in violation of her probation for failing to register as a Controlled Substances Offender, but is reluctant to do so because “it will go on the internet” and would keep her from getting a job anywhere in Nevada County.

17. Respondent graduated from the school of respiratory therapy at UCLA in 1977. She worked as a respiratory therapist for 30 years, at Oroville Hospital and Sierra Nevada Memorial Hospital. She also worked as a home care therapist for Community Home Care on a part-time basis from 1996 until 2003.

18. In 2001, respondent was working as a food server and recreational director at Hilltop Estates, an independent living facility for the elderly. She was fired from that position in September of 2004, because she was late for work after her car was stolen. She worked at the Dollar Store for about a year, and then worked the summer season 2006 at the Orchard Springs Resort at Rollins Lake. She began collecting unemployment in the fall of 2006, and recently obtained part-time employment as a waitress. She receives \$110 per week in unemployment benefits, and she earned about \$450, including tips, as a waitress last month. She pays \$85 per month in court fines and probation costs, and her rent is \$525 per month. Respondent owns a car and pays insurance of \$187 every six months. In November of 2006, the Salvation Army paid \$200 toward her rent, and paid her PG&E bill. She has applied for full-time employment in the past, but is “not really looking right now.”

19. Respondent did not renew her respiratory care practitioner license when it expired in September of 2006 because the Accusation in this matter was pending, and she thought her license was being revoked; she also lacked the money to pay the renewal fee. If she is permitted to retain her license, she intends to eventually work as a respiratory therapist full-time. However, she stated that she would not apply for jobs as a respiratory therapist unless and until she is able to have her conviction reduced from a felony to a misdemeanor, because she “wants to be honest with employers.”

20. Respondent is not involved in church or community activities. She spends time with her daughter, now age 23, and her daughter’s husband and their new baby. Respondent’s son, age 21, is a student at the University of Nevada, Reno.

21. Stephen Shandrew testified on respondent’s behalf at the hearing. He has known respondent for more than 20 years, and he has assisted her financially from time to time. Respondent has always repaid him “eventually.” He has had several businesses, and would be able to provide part-time work to respondent. He described respondent’s character as “outstanding,” but said that she “has had bad taste in people,” and is “influenced by others.” Her reputation in the community was that she was a good respiratory therapist.

22. Respondent submitted three letters of recommendation in this matter, which were considered to the extent permitted by Government Code section 11513, subdivision (d). Norm Underberger prepared a letter dated December 12, 2006, in which he stated that he had known respondent for more than 20 years, and that respondent had “the highest standards of character, [and] morals when it comes to her profession.” He described her as punctual, attentive to others, and modest.

Walter Berringer, retired respiratory care practitioner, was respondent's supervisor at Sierra Memorial Hospital in Grass Valley, on dates not established by the evidence. In a letter dated December 11, 2006, he described respondent as competent, and good to the patients, and she "always had the patient's needs a priority." He confirmed that the hospital sent respondent to be certified to work with neonatal pediatric patients, because she was "good with neonates." Neither Mr. Underberger nor Mr. Berringer indicated in their letters that they were aware of respondent's felony criminal conviction.

The third letter submitted by respondent was written by Laura Lewis. Ms. Lewis has known respondent for 23 years, and served as a nanny to respondent's children while respondent worked as a respiratory therapist. Ms. Lewis' letter references respondent's "mistake," but does not specifically indicate that she is aware of respondent's felony conviction. She noted respondent's efforts to support her family as a single mother, especially in light of the fact that respondent's son has PKU, and requires a special diet and medication; caring for her son consumed most of respondent's time and financial resources.

Costs

23. The Accusation herein contains a request for costs of investigation and enforcement of this matter pursuant to Business and Professions Code sections 3753.5 and 3753.7, in the total amount of \$2,144. Declarations were submitted by Catherine Santillan, Senior Legal Analyst, in support of the cost certification. According to the December 18, 2006, declaration of Ms. Santillan, she billed time to this case as follows:

4. Following is a detailed description of the time I billed to this case: In fiscal year 2005-2006, I reviewed the investigation file and conducted additional investigation for 2.25 hours, prepared an Accusation for 3.5 hours, communicated with the client agency for .75 hours. Respondent did not file a Defense in a timely manner, and I drafted a letter warning her that a default would be taken for .75 hours. I prepared a default decision for 4 hours. Respondent sought relief from the default, and I had many telephone calls between respondent and the client for a total of 3.0 hours in an effort to settle the case.

5. In fiscal year 2006-2007, settlement negotiations continued for a total of 3.25 hours. The case was set for hearing. Hearing preparation totaled 5.25 hours for a total of 8.5 hours in 2006-2007. The grand total is 22.75 hours. My billing rate in 2005-2006 was \$92 per hour. In 2006-2007, my billing rate increased to \$101 per hour. Exhibit 5, the Declaration of Costs which I submitted on December 12, 2006 indicates a total of 22.5 hours for \$2,144 which is .25 hours less than actually billed.

The time spent appears to be reasonable and the activities necessary to the development and presentation of the case.

LEGAL CONCLUSIONS

Standard of Proof

1. A professional license may be disciplined only upon “clear and convincing proof to a reasonable certainty.” *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856. “The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence.... “Clear and convincing” evidence requires a finding of high probability.’ ...” *People v. Mabini* (2001) 92 Cal.App.4th 654, 662.

Substantial Relationship

2. California Code of Regulations, title 16, section 1399.370, subdivision (a), states:

For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts include but are not limited to those involving the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.

[¶]...[¶]

3. As set forth in Findings 3, 5, 8, 12, and 13, respondent’s 2005 criminal conviction was substantially related to the qualifications, functions and duties of a respiratory care practitioner, pursuant to California Code of Regulations, title 16, section 1399.370, subdivision (a), in that she possessed and used methamphetamine, a controlled substance. The conduct giving rise to the conviction violated Business and Professions Code sections 3750, subdivision (g), and 3750.5, subdivisions (a), (b) and (d), and it demonstrated a disregard for the health and safety of others, as well as herself. Respondent’s use of controlled substances, and the preparation of illegal drugs for sale to others, evidences her potential unfitness to perform the duties of a respiratory therapist.

Violations

4. Business and Professions Code section 3750 states, in pertinent part:

The board may order the suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

[¶]...[¶]

(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

[¶]...[¶]

(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

[¶]...[¶]

5. Business and Professions Code section 3750.5 states, in pertinent part:

In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4210) of Chapter 9 of this code.¹

(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety

¹ Methamphetamine is a Schedule II controlled substance as defined by Health and Safety Code sections 11007 and 11055, subdivision (d)(2).

Code, or any dangerous drug as defined in Article 2 (commencing with Section 4015) of Chapter 9.

[¶]...[¶]

(d) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

[¶]...[¶]

6. Business and Professions Code section 3752 states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.”

7. Clear and convincing evidence established cause for discipline of respondent’s certificate to practice respiratory care pursuant to Business and Professions Code sections 3750, subdivision (d), and 3752, by reason of Findings 3, 8 and 13, in that she was convicted of a crime substantially related to the qualifications, functions, and duties of a respiratory care practitioner, namely, possession of methamphetamine, a controlled substance.

8. Clear and convincing evidence established cause for discipline of respondent’s certificate to practice respiratory care pursuant to Business and Professions Code sections 3750, subdivision (g), and 3750.5, subdivision (a), by reason of Findings 3, 5, 8, 12, and 13, in that she used a controlled substance, namely, methamphetamine.

9. Clear and convincing evidence established cause for discipline of respondent’s certificate to practice respiratory care pursuant to Business and Professions Code sections 3750, subdivision (g), and 3750.5, subdivision (b), by reason of Findings 5 and 12, in that

she obtained and possessed, in violation of law, and administered to herself a controlled substance, namely, methamphetamine.

10. Clear and convincing evidence established cause for discipline of respondent's certificate to practice respiratory care pursuant to Business and Professions Code sections 3750, subdivision (g), 3750.5, subdivision (d), and 3752, by reason of Findings 3, 8 and 13, in that she was convicted of a criminal offense involving the possession of a controlled substance, namely, methamphetamine.

Penalty

11. California Code of Regulations, title 16, section 1399.374, states:

In reaching a decision on the disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" [3/02 Edition] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation--for example: the presence of mitigating factors; the age of the case; evidentiary problems.

12. The Board's disciplinary guidelines (Guidelines) list the following examples of aggravating and mitigating circumstances which may be considered by administrative law judges in providing for discipline in their proposed decisions:

EVIDENCE INAGGRAVATION OF PENALTY

1. Patient's trust, health, **safety** or well-being was jeopardized.
2. Patient's or employer's trust violated (i.e. theft, embezzlement, fraud, etc...).
3. Violations involved or were in the presence of children.
4. History of prior discipline.
5. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
6. Perjury on official Board forms.
7. Violent nature of crime or act.
8. Violation of Board Probation.
9. Failure to provide a specimen for testing in violation of terms and conditions of probation.

EVIDENCE IN MITIGATION OF PENALTY

1. Recognition by Respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

2. Respondent was forthcoming and reported violation or conviction to the Board.
3. A substantial amount of time since the violation or conviction (generally 4 or more years) occurred.
4. No prior criminal or disciplinary history.

In respondent's case, none of the factors in aggravation are present. In mitigation, respondent has no prior criminal or disciplinary history. However, it has been less than two years since respondent's conviction.

13. In addition to the Guidelines, the Board has adopted criteria to evaluate the rehabilitation of a respondent in a revocation action.² Applying the criteria of rehabilitation to the facts of this case, respondent possessed a large quantity of methamphetamine, and she helped to repackage the drugs in smaller quantities; she knew or should have known that the methamphetamine was being prepared for sale. She paid for the drugs, although she characterized her actions at hearing as a "loan," and claimed she was just "holding" the drugs. She used methamphetamine, and was under the influence of said drug at the time of

² California Code of Regulations, title 16, section 1399.372, states:

When considering the denial, petition for reinstatement, modification of probation, suspension or revocation of an RCP license, the board will consider the following criteria in evaluating the rehabilitation of such person and his or her eligibility for a license:

- (a) The nature and severity of the act(s) or offense(s).
- (b) The total criminal record.
- (c) The time that has elapsed since the commission of the act(s) or offense(s).
- (d) Compliance with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against such person.
- (e) Evidence of any subsequent act(s) or crime(s) committed.
- (f) Any other evidence of rehabilitation submitted that is acceptable to the board, including:
 - (1) Successful completion of respiratory care courses with a "C" or better, as determined by the institution;
 - (2) Active continued attendance or successful completion or rehabilitative programs such as 12-step recovery programs or psychotherapy counseling;
 - (3) Letters relating to the quality of practice signed under penalty of perjury from licensed health care providers responsible for the supervision of his/her work.
- (g) Statements, letters, attestations of good moral character, or references relating to character, reputation, personality, marital/family status, or habits shall not be considered rehabilitation unless they relate to quality of practice as listed in section (f).

her arrest; her claim that she only tried it once that night, and once ten years earlier, was not credible. She possessed drug paraphernalia, and other items indicative of drug sales, including radio scanners that were tuned to law enforcement frequencies. She permitted her apartment to be used by individuals who she suspected were using and dealing drugs. While she pled no contest to possession of methamphetamine, the underlying conduct demonstrates, at the very least, her acquiescence in the use of her home for a criminal enterprise.

There was no evidence of other criminal convictions. The conduct that gave rise to the conviction occurred 27 months prior to the hearing. Respondent is currently not in full compliance with the terms of her felony criminal probation, in that she has failed to register as a Controlled Substances Offender, thereby circumventing a law enacted to monitor drug offenders and protect the public. Apart from that failure to register, the evidence did not establish that respondent has committed any subsequent crimes. She did not submit evidence of successful completion of respiratory care courses. She had not maintained active continued attendance in a 12-step recovery program. She introduced into evidence letters of reference, but none were submitted under penalty of perjury from licensed health care providers responsible for the supervision of her work.

14. Respondent will remain on supervised felony criminal probation until June of 2008. When a person is on criminal probation or parole, rehabilitation efforts are accorded less weight, “[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion...” (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Therefore, an insufficient period of time has passed for respondent to demonstrate rehabilitation.

15. Under all of the facts and circumstances herein, it would be contrary to the public interest to permit respondent to remain licensed as a respiratory care practitioner, with or without terms and conditions of probation.

Costs

16. Business and Professions Code section 3753.5 states:

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the official custodian of the record or his or her designated representative shall be prima facie evidence of the actual costs of the investigation and prosecution of the case.

(b) The costs shall be assessed by the administrative law judge and shall not be increased by the board; however, the costs may be imposed or increased by the board if it does not adopt the proposed decision of the case. Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any practitioner directed to pay costs.

(c) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(d)(1) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew, for a maximum of one year, the license of any licensee who demonstrates financial hardship, through documentation satisfactory to the board, and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs.

17. Business and Professions Code section 3753.7 states:

For purposes of this chapter, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.

18. As set forth in Finding 23, the costs of investigation and enforcement claimed by the Board herein are in the amount of \$2,144. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, identifies the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions like Business and Professions Code sections 3753.5 and 3753.7. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced; the licensee's subjective good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation was appropriate to the alleged misconduct. In this case, all of the allegations were sustained. As set forth in Finding 18, respondent receives unemployment benefits that, when combined with her part-time income as a waitress, are insufficient to pay for food and rent, and she is making payments to the court in connection with her criminal conviction. Respondent is currently unable to make substantial cost payments.

In this case, the investigative and prosecution costs sought by the Board are reasonable. However, given respondent's inability to pay substantial costs at this time and for the foreseeable future, the amount of costs awarded in this matter is reduced to \$500. Payment of costs shall not be required unless and until respondent seeks reinstatement of her license.

ORDER

1. Respiratory Care Practitioner License No. 7922, issued to Dawn DeReese Medeiros, is revoked by reason of Legal Conclusions 7, 9 and 10.

2. Dawn DeReese Medeiros is ordered to pay to the Board the costs of investigation and prosecution of this matter, in the amount of \$500, pursuant to Legal Conclusion 18. However, costs shall not become due and payable until such time as respondent applies for reinstatement of her respiratory care practitioner license. At that time, the Board shall consider an installment payment plan for respondent.

Dated: _____

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings